IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 7-9-2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

WP Nos.19660 of 2004 and 4032 of 2007
and
WPMP No.23626 of 2004 in WP No.19660 of 2004
and
MP No.2 of 2007 in WP No.4032 of 2007

WP No.19660 of 2004:

G.S.Rajendran .. Petitioner

vs

1.The Director of Elementary
Education
Elementary Education (G) Dept.,
DPI Campus, College Road
Chennai 600 006.
2.The District Elementary
Educational Officer
O/o. The District Elementary
Educational Officer
New Town Hall, Pudukkottai Town
Pudukkottai District.
3.The Asst. Elementary Educational
Officer
Aranthangi, Pudukkottai District
4.M.Gopala Kannan .. Respondents

WP No.4032 of 2007:

M.Indira Gandhi
Secondary Grade Teacher
Municipal Middle School
L.N. Puram, Aranthangi .. Petitioner

vs

1.The Director of Elementary Education
Directorate of Elementary Education,
College Road, DPI Complex
Chennai 6.

2.The Director of Elementary Education
District Elementary Education Office
Pudukkottai

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3.The Assistant Elementary Education Officer
Assistant Elementary Education Office
Aranthangi

4.S.Rajendran .. Respondents

WP No.19660 of 2004 filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the impugned order passed by the 2nd respondent herein in his Rc.No.6205/B3/2003 dated 5.7.2004, quash the same as illegal and arbitrary in nature and consequently direct the respondents 1 to 3 herein to appoint the petitioner herein as Tamil Pandit in the existing post in LN Puram Municipal Middle School, Aranthangi, Pudukkottai District, in accordance with the promotion panel prepared for the year 2004 by the 3rd respondent herein.

WP No.4032/2007 filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records relating to the order passed by the first respondent in Na. Ka. 28054/L3/2006 dated 18.1.2007 and the consequential order of the 2nd respondent passed in Na. Ka. No.4715/A3/06 dated 19.1.2007 and quash the same.

For Petitioner in WP 19660/2004 : Mr.G.Thangavel
For Petitioner in WP 4032/2007 : Mr.D.Rajendran
For Respondents 1 to 3 in both WPs : Mr.N.Senthil Kumar Additional Government Pleader
For 4th Respondent in WP 19660/2004 : Mr.D.Rajendran
For 4th Respondent in WP 4032/2007 : Mr.G.Thangavel

COMMON ORDER

This order shall govern the above two writ petitions. WP No.4032 of 2007 has been brought forth seeking a writ of certiorari to quash the order of the first respondent namely the Director of Elementary Education, Madras, made in Na. Ka. 28054/L3/2006 dated 18.1.2007 and also the consequential orders passed by the second respondent in Na. Ka. No.4715/A3/06 dated 19.1.2007, while the fourth respondent therein has filed WP No.19960 of 2004 seeking a writ of certiorarified mandamus to quash the order of the second respondent dated 5.7.2004 and to direct the respondents 1 to 3 to appoint the petitioner as Tamil Pandit in the existing post.

2.The Court heard the learned Counsel on either side in both the writ petitions. The affidavits in support of the petitions and the counter affidavits are also looked into.

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3.The case of the petitioner in WP No.4032/2007 is that he joined in Ramakrishna Vidyalaya Higher Secondary School, Thiruppunavasal, as Secondary Grade Teacher, on 29.2.1988; that she was further transferred to Kamarajar Kalasalai Middle School (Government Aided), Aranthangi, as per the proceedings in RC 13180/EG2 dated 30.4.1999, and subsequently, appointed in Panchayat Union Middle School, Panchathi, as Secondary Grade Teacher as per the proceedings dated 26.7.1999; that again she got transferred from Panchayat Union Service to Municipal School Service as per the proceedings dated 21.7.2001, of the District Elementary Education Officer, Pudukkottai; that thereafter, the petitioner has completed 18 years of service as Secondary Grade Teacher; that she entered Municipal service on 31.7.2001 and was working continuously; that while the matter stood thus, she also completed B.Lit., (Tamil); that the same was duly entered in the service register on 21.11.2005; that under the circumstances, the petitioner had the necessary qualification and seniority for being promoted as Tamil Pandit for which a vacancy exists; that as per G.O.Ms.No.100 School Education (Budget) Department, dated 27.6.2003, the Government converted and downgraded all the permanent vacancies into Junior Teachers i.e., Junior Secondary Grade Teacher, Junior B.T., Assistant, etc.; that pursuant to the same, the vacancy was filled in with the appointment of one Gopalakannan, Junior B.T., on 7.7.2004; that he was in service upto 3.7.2006, and then, he got his transfer through counseling and was relieved on 3.7.2006; that consequently, a vacancy arose; that since the petitioner was duly qualified to be appointed as Tamil Pandit in the vacancy which arose from 4.7.2006 onwards, she made a representation; that a panel was prepared; that the petitioner was placed in rank No.1; that the fourth respondent Rajendran, was placed in Rank No.1(a), who was junior to the petitioner in service; that pending consideration, the petitioner approached the Madurai Bench of this Court in WP No.7454/2006 wherein there was an order passed by the Bench on 11.10.2006 directing the first respondent therein to consider the representation of the petitioner dated 20.7.2006; that accordingly, she was appointed as Tamil Pandit on consideration of the representation; that while the matter stood thus, the fourth respondent moved this Court in WP No.25363 of 2006, and orders came to be passed on 11.8.2006; that under the circumstances, suddenly the second respondent by his proceedings in Na.Ka.No.5595/A3/04 dated 9.9.2006 followed by another letter in Na.Ka.No.5595/A3/04 dated 9.11.2006 informed the fourth respondent that the petitioner is placed at No.1 in the seniority list and the vacancy relating to the Tamil Pandit, will be filled up according to the seniority; that suppressing these two letters, the fourth respondent moved the contempt application before this Court as if the orders in WP No.25363/2006 referred to above, were disobeyed; that while the matter was pending, this Court passed an order directing the second respondent to take action and pass orders in respect of the seniority as per 2004 seniority list; that accordingly, there was an order passed by the authority which is challenged in this writ petition, on 19.1.2007; that the petitioner has been reverted from the post of Tamil Pandit to the Secondary Grade Teacher; and that under the circumstances, this writ petition has been brought forth.

4.The petitioner in WP No.19960/2004 has brought forth that petition stating that one Gopala Kannan who was actually a Secondary Grade Teacher, was made as Tamil Pandit; that among the persons, the petitioner is actually the person who is fully qualified; that at the time of the

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preparation of the panel, he should have been placed in that place; that under the circumstances, the appointment of Gopala Kannan was not valid, and hence, the orders have got to be quashed, and further direction be issued for his appointment.

5.Both the Counsel in the respective writ petitions put forth their case as found therein. The Court paid its anxious consideration on the submissions made. The Court also heard the learned Additional Government Pleader for the State.

6.It is not in controversy that the petitioners in both these petitions are originally Secondary Grade Teachers in Tamil attached to the School in question. There was a vacancy that arose for the post of Tamil Pandit. A Teacher by name Gopala Kannan, was actually promoted as Tamil Pandit. Now, at this juncture, the same was challenged by the petitioner in WP No.19660 of 2004 that he was the person fully qualified, and thus, Gopala Kannan should not have been appointed; that the said Gopala Kannan was subsequently transferred; that under the circumstances, the vacancy arose; and he should be considered. Thus, it would be quite clear that WP No.19660/2004 was filed challenging the appointment of Gopala Kannan. But, it remains to be stated that Gopala Kannan was transferred, and a vacancy arose. Under the circumstances, the request of the petitioner in WP 19660/2004 does not require for consideration at this stage since the vacancy has actually arisen by the transfer of Gopala Kannan. Hence, that writ petition is liable to be dismissed as infructuous.

7.As regards the other WP No.4032/2007, the grievance of that petitioner is that she was a Secondary Grade Teacher; that she had got the B.Lit.; that she is fully qualified to be appointed as Tamil Pandit; that she filed a writ petition before the Madurai Bench; that there was a direction to the Education Department to consider her representation and pass suitable orders; that accordingly, her representation was considered, and she was also promoted as Tamil Pandit; that while she was working so, suddenly she received a communication that she was demoted from the post of Tamil Pandit to that of the Secondary Grade Teacher, and therefore, that order has got to be quashed. Now, it is replied by the learned Counsel for the fourth respondent who is the petitioner in WP No.19660/2004, that he is the eligible candidate to be promoted as Tamil Pandit; that when his representation was not considered, he moved this Court; that there was an order passed originally in the earlier writ petition in WP No.25363/2006 dated 11.8.2006; that as the orders passed by this Court was disobeyed by the authorities, he took out a contempt application; that there was a direction given to the second respondent to take action and pass orders in respect of the seniority as per 2004 seniority list; that accordingly, he has been promoted; that under the circumstances, his promotion cannot be challenged; that he was the only person competent for that post; that he had the B.Lit. in the year 2004 itself; that he was fully qualified; that he was the senior than the petitioner in WP No.4032/2007, and under the circumstances, his appointment as Tamil Pandit could not be disturbed.

8.The Court paid its anxious consideration on the submissions made. This Court is of the considered opinion that in view of the confusion that was entertained by the Education Authorities, the writ petitions have come before this Court. It is not in controversy that the petitioner in WP No.4032 of 2007 has actually made a representation for the post of Tamil

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Pandit alleging that she has got the necessary qualification; and that she had B.Lit. qualification. Subsequently, a seniority list was prepared, in which she was shown in the first place, while the fourth respondent is shown as 1(a). While the matter stood thus, the petitioner was not appointed despite representation made. Then, she approached the Madurai Bench for necessary orders. Madurai Bench passed an order in WP (MD) No.7454/2006 which runs as follows:

> "Hence, without expressing anything on merits, the petitioner is directed to furnish a copy of the representation along with the copy of this order before the first respondent within one week from the date of receipt of a copy of this order. The first respondent is directed to consider the representation of the petitioner dated 20.7.2006 and pass orders thereon on merits and in accordance with law within four weeks thereafter."

Accordingly, orders came to be passed by the first respondent, and she has also been appointed as Tamil Pandit. It is an admitted position that from 13.11.2006 onwards, she was functioning so. At this juncture, it would be more appropriate to reproduce that part of the counter filed by the Education Department in that writ petition which was filed by the petitioner and also pending in the hands of the Madurai Bench. The same reads thus:

> "(4)It is submitted that the petitioner has qualified as B.Litt. (Tamil). Entries have also been made in the service Register of the petitioner. The petitioner is the senior in the proposed promotion panel seniority list 2006 as prepared by 2nd and 3rd respondents.
> (5)It is submitted that the vacancy for the post of Tamil Pandit in the school arose consequent on the retirement on : 31.10.2002 A.N. So the post was vacant from 01.12.2002 and as per the G.O.2003 School Education Dept. dt: 08.11.1978 the vacancy had to be filled in by the Direct Recruitment."

9.From the very reading of the above counter, it would be quite clear that the petitioner was found to be in list, and she was also senior among others. Accordingly, she was appointed, and she was also working so. While the matter stood thus, pursuant to the orders of this Court passed in the contempt application made as if the orders passed in WP No.25363/2006 was not obeyed by the Education Department, subsequent orders came to be passed, which is the subject matter of challenge, whereby the fourth respondent who is the petitioner in WP No.19660/2004 was appointed as the Tamil Pandit, and the petitioner in this writ petition was demoted. It is a matter of surprise to note that while the writ petition was filed in this Court by the fourth respondent in WP No.25363/2006, the writ petition filed by the petitioner before the Madurai Bench in WP No.7454/2006 was pending, and the petitioner in WP No.19660/2004 who originally filed WP No.25363/2006, was shown as fourth respondent therein; but, he has not whispered anything before the Madurai Bench in those proceedings. That apart, in those proceedings initiated by him in WP No.25363/2006, the present petitioner was conveniently omitted to be shown as party. Thus, she could not bring forth her case before this Court, when the orders came to be passed. After the orders were passed by this Court, in the absence of the petitioner herein in the proceedings in WP No.25363/2006, the petitioner namely the fourth respondent, took out

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the contempt application as if the orders passed therein, were disobeyed. At this juncture, it is pertinent to point out that the entire proceedings at the Madurai Bench in WP No.7454/2006 filed by the petitioner herein were completely suppressed when the matters are pending in this Court, and thus, an order came to be passed issuing a direction to the first respondent to consider the representation of the fourth respondent herein. Under the circumstances, it would be quite clear that once the Education Department, pursuant to the G.O. passed, was of the view and also made it clear before the Madurai Bench in WP No.7454/2006 that the petitioner herein was the person fully qualified, and she was the senior most among the candidates, and she was to be appointed. Accordingly, her representation was considered, and she was promoted. She was also working so. In such circumstances, there is no question of demotion that would arise. The intervening circumstances namely the orders passed in the writ petition filed by the fourth respondent, and the contempt application filed by him, were nothing but the outcome of the suppression of the pending proceedings in WP No.7454/2006 before the Madurai Bench initiated by the petitioner, wherein the fourth respondent was also a party. Under the circumstances, the Education Department without taking into consideration the seniority list which was originally prepared, and also the fact that the petitioner was the senior most, has passed the order of demotion of the petitioner, while she was already promoted and in order to place the fourth respondent herein in her place, which, in the opinion of this Court, cannot be done.

10.Apart from the above, it would be quite evident that the Education Department has taken the first stand in WP No.7454/2006 before the Madurai Bench that the petitioner herein is the senior most person, and she is fully qualified. When the contempt application was taken by the fourth respondent herein, apprehending the results therein, they have taken another stand, an inconsistent one, which should not have been taken. The Education Department should have explained to the Court, at that juncture, the actual happenings, but failed to do so. However, all these things should not make the petitioner to lose her right or entitlement as per the G.O. and the earlier orders of this Court. Under the circumstances, the order passed, appointing the fourth respondent as Tamil Pandit by the first respondent, is quashed. The original position of the petitioner Indira Gandhi as Tamil Pandit pursuant to the orders of the Education Department, is restored.

11.In the result, WP No.4032 of 2007 is allowed, and WP No.19660 of 2004 is dismissed as infructuous. No costs. Consequently, connected WPMP and MP are closed.

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Asst.Registrar

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Sub Asst.Registrar

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nsv/

To:

1.The Director of Elementary
Education
Elementary Education (G) Dept.,
DPI Campus, College Road
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O/o. The District Elementary
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New Town Hall, Pudukkottai Town
Pudukkottai District.

3.The Asst. Elementary Educational Officer
Aranthangi, Pudukkottai District

4. The Director of Elementary Education,
District Elementary Education Office,
Pudukkottai.

2 CC To Mr.G.Thangavel, Advocate, SR NO.56312, 56313.
1 CC To M/s.A.Gandhi, Advocate, SR NO.56201.

WP Nos.19660 of 2004 and
4032 of 2007

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